

Directive 2009/138/EC of the European Parliament and of the Council
of 25 November 2009 on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE I

**GENERAL RULES ON THE TAKING-UP AND PURSUIT OF
DIRECT INSURANCE AND REINSURANCE ACTIVITIES**

CHAPTER IV

Conditions governing business

Section 5

**Professional secrecy, exchange of information
and promotion of supervisory convergence**

Article 64

Professional secrecy

Member States shall provide that all persons who are working or who have worked for the supervisory authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal law, any confidential information received by such persons whilst performing their duties shall not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified.

However, where an insurance or reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

Article 65

Exchange of information between supervisory authorities of Member States

Article 64 shall not preclude the exchange of information between supervisory authorities of different Member States. Such information shall be subject to the obligation of professional secrecy laid down in Article 64.

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F1 Article 65a

Cooperation with EIOPA

Member States shall ensure that the supervisory authorities cooperate with EIOPA for the purposes of this Directive in accordance with Regulation (EU) No 1094/2010.

Member States shall ensure that the supervisory authorities provide EIOPA, without delay, with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.]

Textual Amendments

- F1** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 66

Cooperation agreements with third countries

Member States may conclude cooperation agreements providing for the exchange of information with the supervisory authorities of third countries or with authorities or bodies of third countries as defined in Article 68(1) and (2) only if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

Where the information to be disclosed by a Member State to a third country originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority of that Member State and, where appropriate, solely for the purposes for which that authority gave its agreement.

Article 67

Use of confidential information

Supervisory authorities which receive confidential information under Articles 64 or 65 may use it only in the course of their duties and for the following purposes:

- (1) to check that the conditions governing the taking-up of the business of insurance or reinsurance are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, and the system of governance;
- (2) to impose sanctions;
- (3) in administrative appeals against decisions of the supervisory authorities;

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- (4) in court proceedings under this Directive.

[^{F1}Article 67a

European Parliament powers of investigation

Articles 64 and 67 shall be without prejudice to the powers of investigation conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union (TFEU).]

Textual Amendments

- F1** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 68

Exchange of information with other authorities

- 1 Articles 64 and 67 shall not preclude any of the following:
- a the exchange of information between several supervisory authorities in the same Member State in the discharge of their supervisory functions;
 - b the exchange of information, in the discharge of their supervisory functions, between supervisory authorities and any of the following which are situated in the same Member State:
 - (i) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;
 - (ii) bodies involved in the liquidation and bankruptcy of insurance undertakings or reinsurance undertakings and in other similar procedures;
 - (iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;
 - (iv) [^{F2}authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council⁽¹⁾ for compliance with that Directive;]
 - c the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary for the performance of their duties.

The exchanges of information referred to in points (b) and (c) may also take place between different Member States.

The information received by those authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in Article 64.

- 2 Articles 64 to 67 shall not preclude Member States from authorising exchanges of information between the supervisory authorities and any of the following:

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- a the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and other similar procedures;
- b the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;
- c independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which apply the first subparagraph shall require at least that the following conditions are met:

- a the information must be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;
- b the information received must be subject to the obligation of professional secrecy laid down in Article 64;
- c where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to the first and second subparagraphs.

3 Articles 64 to 67 shall not preclude Member States from authorising, with the aim of strengthening the stability, and integrity, of the financial system, the exchange of information between the supervisory authorities and the authorities or bodies responsible for the detection and investigation of breaches of company law.

Member States which apply the first subparagraph shall require that at least the following conditions are met:

- a the information must be intended for the purpose of detection and investigation as referred to in the first subparagraph;
- b information received must be subject to the obligation of professional secrecy laid down in Article 64;
- c where the information originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions set out in the second subparagraph.

In order to implement point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the supervisory authority from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.

4 Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons or bodies which may receive information pursuant to paragraph 3.

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Textual Amendments

- F2** Inserted by [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU \(Text with EEA relevance\).](#)

Article 69

Disclosure of information to government administrations responsible for financial legislation

Articles 64 and 67 shall not preclude Member States from authorising, under provisions laid down by law, the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

[^{F3}Such disclosure shall be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Article 65 and Article 68(1), and information obtained by means of on-site verification referred to in Article 33, may be disclosed only with the express consent of the supervisory authority from which the information originated or the supervisory authority of the Member State in which the on-site verification was carried out.]

Textual Amendments

- F3** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

[^{F3}Article 70

Transmission of information to central banks, monetary authorities, payment systems overseers and the European Systemic Risk Board

1 Without prejudice to Articles 64 to 69, a supervisory authority may transmit information intended for the performance of their tasks to the following:

- a central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;
- b where appropriate, other national public authorities responsible for overseeing payment systems; and

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- c the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council⁽²⁾, where that information is relevant to carrying out its tasks.

2 In an emergency situation, including an emergency situation as referred to in Article 18 of Regulation (EU) No 1094/2010, Member States shall allow the supervisory authorities to communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where such information is relevant to its tasks.

3 Such authorities or bodies may also communicate to the supervisory authorities such information as they may need for the purposes of Article 67. Information received in this context shall be subject to the provisions on professional secrecy laid down in this Section.]

Textual Amendments

F3 Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 71

Supervisory convergence

1 Member States shall ensure that the mandates of supervisory authorities take into account, in an appropriate way, a European Union dimension.

[^{F32} Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- a the supervisory authorities participate in the activities of EIOPA;
- b the supervisory authorities make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and state reasons if they do not do so;
- c national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of EIOPA or under this Directive.]

^{F43}

Textual Amendments

F3 Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

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- F4** Deleted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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- (1) [^{F2}Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).]
- (2) [^{F3}Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).]

Textual Amendments

- F2** Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).
- F3** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).